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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2011-0019]

RIN 0579-AD46

Importation of Jackfruit, Pineapple, and Starfruit From Malaysia Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow the importation of fresh jackfruit, pineapple, and starfruit from Malaysia into the continental United States. As a condition of entry, all three commodities must be irradiated for insect pests, inspected, and imported in commercial consignments. There will also be additional, commodity-specific requirements for other pests associated with jackfruit, pineapple, and starfruit from Malaysia. This action provides for the importation of jackfruit, pineapple, and starfruit from Malaysia while continuing to provide protection against the introduction of quarantine pests.

DATES: *Effective Date:* [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Juan A. (Tony) Román, Regulatory Policy Specialist, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 851-2242.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart–Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-64, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

On May 7, 2013, we published in the Federal Register (78 FR 26540-26544, Docket No. APHIS-2011-0019) a proposal¹ to amend the regulations concerning the importation of fruits and vegetables to allow the importation of jackfruit, pineapple, and starfruit with stems from Malaysia into the continental United States. We also prepared pest lists identifying those quarantine pests likely to follow the pathway of jackfruit, pineapple, and starfruit imported from Malaysia. These pest lists identified 24 pests of quarantine significance for jackfruit, 22 pests of quarantine significance for pineapple, and 14 pests of quarantine significance for starfruit that could follow the pathway of the importation of these fruits from Malaysia.

In order to provide an appropriate level of phytosanitary protection against the pests of quarantine concern associated with the importation of jackfruit, pineapple, and starfruit from Malaysia into the continental United States, we proposed to require that the jackfruit, pineapple, and starfruit be irradiated for insect pests in accordance with 7 CFR part 305 and the Plant Protection and Quarantine Treatment Manual,² be inspected by the national plant protection organization (NPPO) of Malaysia, and be imported only in commercial consignments. We also

¹ To view the proposed rule, supporting and related documents, including the economic analysis, and comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0019>.

² http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf.

proposed to require additional, commodity-specific requirements for other pests associated with jackfruit, pineapple, and starfruit from Malaysia.

We solicited comments on our proposal for 60 days ending July 8, 2013. We received two comments by that date, from the Government of Malaysia and a private citizen. One commenter was supportive of the rule. The other commenter expressed concern regarding the requirement for cutting a sample of starfruit to determine freedom from Cryptophlebia spp. Specifically, the commenter asked how the fruit would be kept fresh after being cut open. Only a small, representative sample of each consignment of starfruit from Malaysia would be cut open. Those fruits would be discarded after cutting and not offered for export or sale. If a single live Cryptophlebia spp. moth is found during sampling, the entire consignment of fruit will be prohibited importation into the United States and a notice of non-compliance will be issued to the NPPO of Malaysia.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Note: In our May 2013 proposed rule, we proposed to add the conditions governing the importation of jackfruit, pineapple, and starfruit from Malaysia as § 319.56-59. In this final rule, those conditions are added as § 319.56-65.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document

for a link to Regulations.gov) or by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

APHIS is amending the fruits and vegetables regulations to allow imports of fresh jackfruit, pineapple, and starfruit with stems from Malaysia into the continental United States under certain phytosanitary requirements. The United States is a net importer of tropical fruits in general and pineapple in particular. Domestically, these fruits can only grow in limited numbers in greenhouses or in the State of Hawaii. In 2006 (the most recent year for which data are available), U.S. production of pineapples (i.e., in Hawaii) was 188,000 metric tons. Between 2003 and 2012, the United States imported an average of 689,000 metric tons of fresh pineapples annually. In 2012, the United States imported 925,000 metric tons of fresh pineapples, which were valued at \$513 million. The declining pineapple production in Hawaii is augmented by U.S. imports from Asian countries, Mexico, and Central America.

The Government of Malaysia expects to export to the United States around 2,500 metric tons of fresh pineapple, 1,500 metric tons of fresh jackfruit, and 3,000 metric tons of fresh starfruit annually. With respect to average annual U.S. imports of pineapples, the proposed amount consists of less than 0.4 percent of the amount of U.S. pineapple imports. There are no trade data for the other two fruits to compare.

U.S. entities most likely to be directly affected by this rule are importers and wholesale merchants of fresh fruits and vegetables (NAICS 424480). There is no specific data available that would allow us to identify the number of importers and wholesale merchants that trade in fresh jackfruit, pineapple, and starfruit. Assuming that the percentage of small entities importing fresh jackfruit, pineapples, and starfruit into the United States is approximately the same as the percentage of small entities importing all fresh fruits and vegetables, and given the fact that, in

2007 nearly 95 percent (4,207 of 4,437) of fruit and vegetable wholesale establishments that operated the entire year were small by Small Business Administration standards, then nearly all of the entities that may be affected positively by this rule are small. Even though these entities would be affected positively, these effects will be minor due to the small volume of the expected imports from Malaysia.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule allows jackfruit, pineapple, and starfruit with stems to be imported into the continental United States from Malaysia. State and local laws and regulations regarding jackfruit, pineapple, and starfruit imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this final rule, which were filed under 0579-0408, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied,

we will publish a document in the Federal Register providing notice of what action we plan to take.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.56-65 is added to read as follows:

§ 319.56-65 Jackfruit, pineapple, and starfruit from Malaysia.

Fresh jackfruit (Artocarpus heterophyllus Lam.), pineapple (Ananas comosus (L.) Merr.), and starfruit (Averrhoa carambola L.) may be imported into the continental United States from Malaysia only under the conditions described in this section.

(a) General requirements for jackfruit, pineapple, and starfruit from Malaysia. (1)

Jackfruit, pineapple, and starfruit from Malaysia must be treated for plant pests with irradiation in accordance with part 305 of this chapter.

(2) Jackfruit, pineapple, and starfruit from Malaysia may be imported in commercial consignments only.

(b) Additional requirements for jackfruit from Malaysia. (1) If the jackfruit has stems, these stems must be less than 5 cm in length.

(2)(i) The jackfruit must originate from an orchard that was treated during the growing season with a fungicide approved by APHIS for Phytophthora meadii, and the fruit must be inspected by the national plant protection organization (NPPO) of Malaysia prior to harvest and found free of this pest; or

(ii) The jackfruit must be treated after harvest with a fungicidal dip approved by APHIS for P. meadii.

(3) Each consignment of jackfruit imported from Malaysia into the continental United States must be accompanied by a phytosanitary certificate, issued by the NPPO of Malaysia, with an additional declaration that the jackfruit has been subject to one of the mitigations for P. meadii in paragraph (b)(2) of this section and has been inspected prior to shipment and found free of P. meadii. Additionally, if the jackfruit has been irradiated in Malaysia, the phytosanitary certificate must have an additional declaration that the fruit has been treated with irradiation in accordance with 7 CFR part 305.

(c) Additional requirements for pineapple from Malaysia. (1)(i) The pineapple must originate from an orchard that was treated during the growing season with a fungicide approved by APHIS for Gliomastix luzulae, Marasmiellus scandens, Marasmius crinis-equi, Marasmius

palmivorus, and Prillieuxina stuhlmannii, and the fruit must be inspected by the NPPO of Malaysia prior to harvest and found free of those pests; or

(ii) The pineapple must be treated after harvest with a fungicidal dip approved by APHIS for G. luzulae, M. scandens, M. crinis-equi, M. palmivorus, and P. stuhlmannii.

(2) The pineapple must be sprayed after harvest but prior to packing with water from a high-pressure nozzle or with compressed air so that all Achatina fulica and Eutetranychus orientalis are removed from the surface of the pineapple.

(3) Each consignment of pineapple imported from Malaysia into the continental United States must be accompanied by a phytosanitary certificate, issued by the NPPO of Malaysia, with an additional declaration that the pineapple has been subject to one of the mitigations for G. luzulae, M. scandens, M. crinis-equi, M. palmivorus, and P. stuhlmannii in paragraph (c)(1) of this section, has been treated for A. fulica and E. orientalis in accordance with paragraph (c)(2) of this section, and has been inspected prior to shipment and found free of A. fulica, E. orientalis, G. luzulae, M. scandens, M. crinis-equi, M. palmivorus, and P. stuhlmannii. Additionally, if the pineapple has been irradiated in Malaysia, the phytosanitary certificate must have an additional declaration that the pineapple has been treated with irradiation in accordance with 7 CFR part 305.

(d) Additional requirements for starfruit from Malaysia. (1) Before shipment, each consignment of starfruit must be inspected by the NPPO of Malaysia using a sampling method agreed upon by APHIS and the NPPO of Malaysia. As part of this method, a sample must be obtained from each lot, inspected by the NPPO of Malaysia, and found free from Phoma averrhoae. The fruit in the sample must then be cut open, inspected, and found free from pupae of Cryptophlebia spp. If a single live Cryptophlebia spp. moth is found during sampling, the

entire consignment of fruit will be prohibited from import into the United States and a notice of non-compliance will be issued to the NPPO of Malaysia.

(2) Each consignment of starfruit imported from Malaysia into the continental United States must be accompanied by a phytosanitary certificate, issued by the NPPO of Malaysia, with an additional declaration that the starfruit has been inspected prior to shipment and found free of P. averyrhoe and pupae of Cryptophlebia spp. Additionally, if the starfruit has been irradiated in Malaysia, the phytosanitary certificate must have an additional declaration that the fruit has been treated with irradiation in accordance with 7 CFR part 305.

(Approved by the Office of Management and Budget under control number 0579-0408)

Done in Washington, DC, this 12th day of March 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

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